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WASHINGTON MUTUAL BANK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ACTUATE CORPORATION, a Delaware
corporation,

Plaintiff,

vs.

WASHINGTON MUTUAL BANK, a
Washington corporation,

Defendant.

Case No. CV 08-2918 SI

**STIPULATION TO EXTEND TIME FOR
INITIAL CASE MANAGEMENT
CONFERENCE AND MOTION;
[PROPOSED] ORDER THEREON**

Judge: Hon. Susan Illston

Case No. CV 08-2918 SI
STIPULATION TO EXTEND TIME FOR CMC
AND MOTION; [PROPOSED] ORDER

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STIPULATION

Pursuant to Local Rule 6-2(a), Defendant Washington Mutual Bank (“Washington Mutual”), and Plaintiff Actuate Corporation (“Actuate”), through their respective counsel, hereby submit this joint stipulation and proposed Order. The facts set forth below also are confirmed in the Declaration of Benjamin K. Riley, filed herewith.

WHEREAS, this Court has set the Initial Case Management Conference in this case for Friday, November 21, 2008, at 2 pm;

WHEREAS, Actuate has filed a Motion to Strike certain affirmative defenses in Washington Mutual’s Answer, and that motion is set to be heard on Friday, November 21, 2008, at 9 am;

WHEREAS, on or about Thursday, September 25, 2008, the Office of Thrift Supervision appointed the Federal Deposit Insurance Corporation (“FDIC”) as the Receiver for Washington Mutual. On the same day, the FDIC closed Washington Mutual and upon closure JPMorgan Chase & Co. (“JPMorgan Chase”) acquired certain banking assets and liabilities of Washington Mutual; and

WHEREAS, the effect of the referenced transactions on this litigation is still not yet clear, but that effect is expected to be understood in the next several weeks.

ACCORDINGLY, the parties wish to continue the time set for both the initial Case Management Conference and the pending Motion to Strike by approximately one month, in order to allow them to better understand the effect on this litigation of the FDIC and JPMorgan Chase transactions. The parties therefore request that both the initial Case Management Conference and Actuate’s Motion to Strike, be continued until **Friday, December 19, 2008**, or some other date and time thereafter convenient for the Court.

IT IS SO STIPULATED.

Dated: October 27, 2008.

BERGESON, LLP

By: /s/ Hway-Ling Hsu
Hway-Ling Hsu

Attorneys for Plaintiff
ACTUATE CORPORATION

Dated: October 27, 2008

HOWREY LLP

By: /s/ Benjamin K. Riley
Benjamin K. Riley

Attorneys for Defendant
WASHINGTON MUTUAL BANK

[PROPOSED] ORDER

Pursuant to the stipulation of counsel, and good cause shown therefor, it is hereby ordered that the initial Case Management Conference in this matter shall be held on December 19, 2008, at 2 p.m. and that Actuate's Motion to Strike Affirmative Defenses will be heard on December 19 2008, at 9 a.m,



Hon. Susan Illston
United States District Judge

**CERTIFICATION BY BENJAMIN K. RILEY PURSUANT TO GENERAL RULE NO. 45,
SECTION X. RE E-FILING ON BEHALF OF MULTIPLE SIGNATORIES**

1. I am an attorney licensed to practice law in the State of California, and am a partner with the law firm of Howrey LLP, counsel for Defendant Washington Mutual Bank. The statements herein are made on my personal knowledge, and if called as a witness I could and would testify thereto.

2. The above e-filed document contains multiple signatures. I declare that concurrence has been obtained from each of the other signatories to file this jointly prepared document with the Court. Pursuant to General Rule No. 45, I shall maintain records to support this concurrence for subsequent production for the Court if so ordered, or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct on October 27, 2008.

/s/ Benjamin K. Riley
Benjamin K. Riley